

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	
	)	
State E-Rate Coordinators' Alliance ('SECA')	)	Public Notice DA 07-1846
Petition concerning Technology Plan creation	)	
requirements	)	

**COMMENTS ON THE STATE E-RATE COORDINATORS' ALLIANCE (SECA) PETITION FOR CLARIFICATION AND/OR WAIVER OF E-RATE RULES CONCERNING TECHNOLOGY PLAN CREATION AND APPROVAL UNDER THE SCHOOLS AND LIBRARIES UNIVERSAL SERVICE SUPPORT MECHANISM**

Spectrum Communications submits these comments in response to the Federal Communications Commission's ("FCC") Public Notice released April 25, 2007. The Public Notice, DA 07-1846, seeks comment on the State E-Rate Coordinators' Alliance ('SECA') petition for clarification and/or waiver of E-Rate rules concerning technology plan creation and/or approval under the Schools and Libraries Service Support Mechanism, commonly known as the 'E-Rate' program.

***SECA's Petition (summarized):***

The SECA petition provides 3 suggestions for technology planning guidelines, which they believe 'would better meet the spirit, intent, and letter of the FCC rules'.<sup>1</sup>

In summary these suggestions in order are:

1. Any applicant operating under an approved technology plan at the time it files its Form 470 would be deemed compliant with FCC's technology plan requirements<sup>2</sup>

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<sup>1</sup> SECA Petition for clarification; CC Docket No. 02-6; page 6

2. Any applicant planning to introduce a new technology initiative not covered in its existing plan would, upon request, be responsible for demonstrating that it was following the evaluation component of its current plan.
3. A state contracting entity, filing a Form 470 in connection with state master contracts that may be used by E-rate applicants for a variety of eligible products and services, should not itself be subject to any technology plan requirements.

### *Discussion:*

Spectrum supports SECA's position and recommendations as presented. We would however like to provide additional comment in regards to USAC's ("Universal Service Administrative Company") current interpretation and implementation of FCC rules and orders.

#### *Current FCC rules/orders may be confusing.*

It is clear that the present issue related to the technology plan, is one of 'timing'.

FCC rules require that a technology plan be 'in place' at the time the applicant files its Form 470<sup>3</sup>, and that applicants must confirm, in FCC Form 486, that their plan was approved before they began receiving services pursuant to it.<sup>4</sup>

However, in the Brownsville Independent School District, *et al.*, decision the FCC realized that confusion within the applicant community existed when it stated that applicants;

*"thought they could use two different plans to satisfy the technology plan requirements whereas the rules require applicants to develop a technology*

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<sup>2</sup> (10-1-04 Edition): 47 C.F.R. 54.504(b)(2)(iii)(A); "Individual technology plans for using the services requested in the application.." and 54.504(b)(2)(iv); "The technology plan(s) has/have been approved by a state or other authorized body..." and 54.508(d); "Applicants required to prepare and obtain approval of technology plans under this subpart must obtain such approval.."

<sup>3</sup> 54.504(b)(2)(iii)-(iv)

<sup>4</sup> 54.508(c); "Timing of certification"

*plan in advance of filing their FCC form 470 and to obtain approval of **that same plan** prior to the commencement of services (emphasis added).*<sup>5</sup>

We understand and support FCC and USAC efforts to ensure consistency of the ‘filed’ plan and the ‘approved’ plan.

There are however situations which require deviation from the initial technology plan used for Forms 470 filing, and that of the approved technology plan used for Form 486. For example;

1. A technology plan can not foresee changes in technology which may, after the original technology plan used for Forms 470 submission, have become;
  - a. Outdated,
  - b. Improved, or
  - c. Significantly increased or decreased in cost(s)
2. A technology plan can not predict an applicants’ budget at the time of E-Rate funding (‘Funding Commitment”).
3. A technology plan can not determine if or when an applicant will receive E-Rate funding.

Moreover, it is feasible, presumable and often desirable, that an applicant would/could change its original design/idea contained in its technology plan due to changes in;

- a. Technology
- b. School building modifications
- c. Budget(s)
- d. Personnel
- e. Philosophy
- f. Changes in federal, state or local educational requirements

Further, both FCC and USAC in the past have encouraged applicants to develop 3 year technology plans.<sup>6</sup> This is not without merit because there are costs associated with the development of a technology plan.

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<sup>5</sup> FCC Order 07-37; In the Matter of Brownsville Independent School District *et al.*, page 7, paragraph 13.

<sup>6</sup> See USAC web page (<http://www.universalservice.org/sl/applicants/step02/technology-planning/>) dated 1/6/06. Also, Form 470 “Evergreen” contracts which are designed for applicants who wish to, or are require to, enter into multi-year contracts.

Many applicants have in fact developed technology plans with 3 or 5 year goals with the expectation of creating a flexible, dynamic and living document.

In its Fifth Report and Order, FCC reiterated their conclusion that the technology plan should focus on “research and planning for technology needs”<sup>7</sup> rather than act as preliminary RFP’s. A technology plan is not a ‘blueprint’ for construction, but an implementation plan for educational purposes, and must contain at least 5 elements which demonstrate an acceptable level of planning for the purposes of E-Rate participation.<sup>8</sup>

**A primary example** of how an applicant could find itself in between ‘funding year(s)’ and ‘technology planning year(s)’ is as follows:

In July of 2000, the beginning of XYZ School District’s physical and budget year, XYZ develops and adopts a 3-year technology plan for years (July)2000-(June)2003.

Pursuant to E-Rate rules, XYZ School District (‘XYZ’) must enter into a contract prior to filing its Form 471, normally within the ‘filing window’ as administered by USAC, in February 2001. Here, XYZ’s 3-year technology plan is both in place at the time of the Form 470 filing and presumably during the ‘funding and/or construction year’ (this anticipates E-Rate funding occurring in July 1, 2001).

The following year 2002, XYZ’s 3-year plan would meet the current rules.

**It is the last year, 2003 which presents the problem.** That is, XYZ will enter into a contract sometime in January 2003 (no later than the Form 471 window closing in February 2003). But it can not get funded by USAC any sooner than July 1, 2003. At this point, XYZ no longer meets the current technology requirement of having the same technology plan which it had in place at the Form 470 filing, and its Form 486 filing.

Moreover, if XYZ School District were to implement a new or revised technology plan, which it would be required to do by July 1, 2003 because their 3-year plan had ended, they would be in violation of E-Rate rules, under current FCC order understanding; placing their funding request or potential funding at risk of loss.

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<sup>7</sup> Ysleta Order

<sup>8</sup> FCC’s Fifth Report and Order (FCC 04-190, released August 13, 2004)

Further, there must be a distinction made between ‘contract period’, ‘funding years’, ‘budget years’, and ‘construction years’. Typically these are defined as follows:

- **Contract Period** – speaks to the contract between the applicant and service provider. Although executed at the beginning of each calendar year, prior to filing of the Form 471, the contract period is normally that time which an applicant and its service provider are under contract for the products/services which are being sought. Delivery of products or services defined within the contract can not begin until July 1, as specified in the E-Rate guidelines (known as ‘service start date’). FCC rules allow contract years to be extended as approved by USAC, thus extending the contract period and the construction year/period (see below).
- **Funding Year** – commencing on July 1, the Funding Year is the time window which an applicant is able, under E-Rate rules to receive E-Rate funds, as issued by a Funding Commitment Decision Letter (‘FCDL’). The ‘end’ of this window or cycle has been dictated by the length of time it takes USAC to issue the FCDL’s to the applicants.
- **Budget Year** – this is the budget cycle of the applicant. Normally beginning on the 1<sup>st</sup> of July and ending on the 31<sup>st</sup> of June.
- **Construction Year/Period** – this is the timeframe for which products and/or services can be provided to an applicant. Under E-Rate rules, the construction year can not begin until after July 1, and must be completed by September 31 of the following year. There are some exceptions; such as, an FCDL issued after March of the following year is allowed to end September of the next year (e.g. FCDL issued in March 00, construction must be completed by September 31, 01). Extensions that meet certain criteria may also be granted by USAC, thereby extending the construction year.

Because of the unpredictability of the Funding Year, applicants are often left guessing when they could be funded (or not). This results in several problems, which require FCC and/or USAC intervention, and often result in substantial delays. Some effects are:

1. A technology plan which would have been valid (i.e. in place at the time of filing the Form 470 and Form 486) is, because of late funding, now out-of-date or considered invalid.
2. Budgets which were presumed for a particular funding year are no longer available to the applicant.
3. Contracts have lapsed and require extension requests (Form 500) to USAC for approval.
4. Products and/or Services are out-of-date, no longer available, or have risen in cost. The resulting effect is that the applicant/service provider must apply to USAC for a service substitution. Moreover, E-Rate does not provide for Consumer Price Indexing ('CPI') increase as a result of higher associated costs.
5. Applicants, if funded, lose their requested maintenance funds because E-Rate rules do not allow maintenance to be paid for retro-actively unless the applicant has paid it themselves, and then they must request a BEAR ('Billed Entity Applicant Reimbursement').

### *Conclusion:*

We reaffirm our support for the SECA petition.

We believe that it is in the public interest, and so also support a waiver of FCC rules, section 54.504(b)(2)(iii)-(iv) for those applicants that failed to have a technology plan approved at the time they filed their FCC Form 470 or that had obtained approval of a technology plan that covered only part of the funding year, or that had an approved technology plan that had lapsed during the course of the funding or construction year.

We believe an applicant who has or had an approved technology plan in place at the time of filing their Form 470 should not be denied funding if their technology plan is changed, modified or redrafted, as long as there exists an approved plan pursuant to FCC order 97-157.

We believe that an applicant should have the ability to change, modify or redraft their technology plan as needed as long as that plan is or has been approved prior to the filing of the Form 486.

We believe that an applicant should have the ability to change, modify or redraft their technology plan as needed, and submit that plan for approval to a technology plan approver pursuant to FCC Order 97-157, after the filing of the Form 486.

Further, we ask the FCC to provide the School and Libraries Division of USAC with specific clarification of FCC rules related to technology planning, as well as additional funding in order to meet the goals of developing outreach efforts to help applicants gain better understanding not only of technology planning requirements, but of the E-Rate program overall.

Spectrum stands ready to support, and is thankful for the efforts of, the FCC and USAC in making the entire Universal Service Funds program a success.

This comment being respectfully submitted,

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